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Section 23 of the Charter: Provincial Implementation

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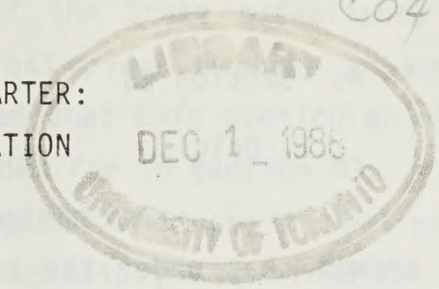

SECTION 23 OF THE CHARTER: PROVINCIAL IMPLEMENTATION

ISSUE DEFINITION

Some view the inclusion of section 23 in the Canadian Charter of Rights and Freedoms as the normal culmination of the age-old demands of the country's French-language minorities. Others see this provision as reparation for the limitations imposed on the English-language minority in Quebec by sections 72 and 73 of Bill 101 passed in 1977, which restricted access to English schools. Four years after guaranteeing minority language education rights, section 23 has made it possible to right certain wrongs suffered by Canada's two largest linguistic minorities: Franco-Ontarians and English Quebeckers. The governments in the other provinces have not yet made any attempts to comply with this new constitutional provision, even though it falls under their jurisdiction. Generally speaking, changes have been slow to come about, either because the linguistic minorities were not sufficiently mobilized to take cohesive action, or because they were not fully aware of the rights they in fact enjoy under section 23. However, there is reason to believe that in view of the large number of cases pending before or being prepared for the courts, changes will be forthcoming shortly. Moreover, the preamble of the bill on official languages tabled in the House of Commons on 25 June 1987 states: "the Government of Canada is committed to cooperating with provincial governments and institutions to [...] respect the constitutional guarantees of minority language education rights". If the bill is adopted without amendment, and there is every reason to believe that it will be, the government will have to take steps to ensure that the provinces uphold the education rights guaranteed in the Constitution Act, 1982.

BACKGROUND AND ANALYSIS

A. Section 23

1. Origin

Two historic rulings handed down since Confederation clearly showed that under the terms of the Constitution Act, 1867, the provinces were not required to meet the educational needs of their linguistic minorities (Mackell decision in Ontario (1917) and the decision involving the Protestant School Board of Greater Montreal (1976)). The sequence of events in this area was as follows: when joining Confederation, the provinces left it up to their linguistic minorities to establish schools providing instruction in their own language. In the early years of the 20th century, the linguistic majorities more or less limited this prerogative, relaxing their stand a little some 50 years later. However, none of the provinces, with the exception of New Brunswick, granted its minority groups rights in managing their schools.

Since the 1960s, official documents (such as reports from commissions of inquiry and special committees and reports from first ministers' conferences) have begun to call for some constitutional protection of minority education rights. These reports initially recommended that parents be allowed to choose freely their children's language of instruction, then spoke of restricting this choice to parents belonging to the official language minority. Section 23 gradually emerged as the brightest hope for the survival of official language communities, in that it entrenched their education rights in the Constitution.

2. Nature

Generally speaking, the rights conferred in constitutional documents are the traditional fundamental rights that are the essential attributes of a human being, such as freedom of expression, opinion and religion. Moreover, it is up to the individual himself to give these rights effect. However, the right conferred in section 23 of the Charter is social and cultural. It is not inherent in human nature. Those who

would exercise this right cannot do so on their own initiative. It is a potential right that can be exercised only if the State establishes the necessary structures. It obliges the political power to take an active part in its implementation. It should be noted that this particular right is not covered by the express derogation provided for in section 33.

Section 23 is also a kind of hybrid. Since it applies to individuals with certain specific characteristics, it involves an individual right. However, since it also concerns the official language minority, according to the numbers criterion, and oversees the continued existence of the minority community, this section also grants a collective right. Indeed, the Justice Minister stated before the Joint Committee on the Constitution that the concern there was not with majority education rights, but rather with the education rights of minority language groups.

3. Content

Exactly what rights are guaranteed by section 23? At the very least, the right to hold classes in which the language of instruction is in the minority language, and at the very most, the right of the minority language group to manage its own school boards. It is the responsibility of the provincial legislatures and of the courts to define the criteria for implementation and to decide whether or not these are adequate; French or English classes are supposed to be geared to children of the minority group (which would appear to exclude immersion classes); classes should be held in separate institutions and they should be managed by the minority group (the point that certainly promises to be the most hotly disputed).

Who are the individuals entitled to exercise these rights? All parents whose mother tongue is that of the linguistic minority in a province or territory; this would appear to mean English-speaking parents in Quebec and French-speaking parents in all other provinces. These parents must have been educated or have a child who has been educated in that minority language elsewhere in Canada (the so-called "Canada clause" provision); they must also be Canadian citizens (immigrants are thus excluded).

4. Limitations

These rights are subject to preliminary political scrutiny. The number of children must be sufficiently high to warrant the use of provincial public funds for the provision of instruction or the establishment of institutions for the minority language group. Ought this number to be calculated on a local, regional or provincial basis? Can it vary from province to province, considering the principle of equality spelled out in section 15? This particular aspect of the provision will be very difficult to implement.

Moreover, section 29 of the Charter stipulates that the denominational rights granted under section 93 of the Constitution Act, 1867 must not be threatened in any way, thus making it difficult to reconcile denominational rights and language rights where structures are already restricted by a limited clientele.

5. Possible Recourse and Sanctions

According to constitutional experts, section 23 has cleared the way for an all-out offensive against provincial school systems where insufficient or no appropriate legislative measures exist. The first phase of this offensive is to have any system declared unconstitutional that sanctions the violation of the Charter, either on the grounds that the education legislation is silent on the issue of linguistic rights or on the grounds that it grants discretionary powers or imposes arbitrary conditions.

However, the mere act of striking down the constitutionality of a piece of legislation in no way changes the actual experiences of minorities. How can an obstinate government be made to comply with a legal order? The Charter authorizes parents to file a claim against the State; that is, to request the establishment of institutions so that they can ultimately exercise their right. The Charter empowers the courts to force a government to fulfill its obligations. Indeed, section 24(1) of the Charter allows the courts to impose an appropriate sanction where this right is negated. For example, a school board could be charged with

contempt of court and its assets seized and sold, as has already happened in the United States.

As matters now stand, heated political and legal battles are likely, barring a profound change of attitude on the part of certain English-speaking provinces. Moreover, the legislative and judicial powers must cooperate in order for the necessary corrective action to be taken.

B. Impact of Section 23 in the Provinces

When the Constitution Act, 1982 received Royal Assent, only the province of New Brunswick was actually complying with the new constitutional requirements respecting language rights in the area of education. In the nine other provinces, education legislation was delinquent in five major areas governed by section 23:

1. discretionary powers;
2. the numbers criterion;
3. the definition of instruction in the minority language and the rules respecting access to such instruction;
4. the concept of educational institution;
5. the right to manage.

The situation differs, however, from one province to the next. For example, the respective legislative provisions of Newfoundland and British Columbia are silent on the issue of the above-mentioned rights. If silence results in failure to exercise the rights conferred, authorities have a duty to correct this problem. Other provinces have incomplete legislation, while in several the legislation is faulty. We will now examine the impact of section 23 in two provinces where the legislative provisions have already been amended, Quebec and Ontario.

1. Quebec

The popularity of English-language schools in Quebec, which took in virtually all children of immigrants and a growing number of Francophone children, led to the adoption of restrictive legislative measures. Bill 101, which was passed in 1977, established French as the common language of instruction, except for a select exempt group. Only

parents who themselves had attended English schools in Quebec or whose children had been instructed in English in Quebec were permitted to attend English schools. The originators of section 23 of the Charter were clearly opposed to the restriction of the residency provision to Quebec, as can be seen from their inclusion of the Canada clause in the Constitution.

The decision handed down in 1984 by the Supreme Court of Canada, to date the only ruling by the Court on the minority language education rights issue, rendered inoperative chapter VIII of Bill 101 and the accompanying regulations, on the grounds that they contravened section 23 of the Charter. The Protestant school boards were informed that they could enroll children designated under the Canada clause and that they were legally entitled to the relevant subsidies. The Court ruled that any person who had received his primary education in English anywhere in Canada or whose child had been or was being instructed in English in Canada was entitled to have his or her children educated in English in Quebec. It is clear that when provincial legislation stands in blatant contradiction to the Charter, the Charter takes precedence.

Moreover, Protestant school boards in Quebec sought a declaratory judgment from the Quebec Court of Appeal recognizing their exclusive right to administer education in their schools, without having to comply with government and education department directives in so far as the education system is concerned. **The Court of Appeal rejected the request and in June 1987 the Protestant school boards appealed this ruling to the Supreme Court, which also refused to hear their case.**

In 1985, the National Assembly passed Bill 3, which called for the creation of language school boards patterned on the New Brunswick model. The concept of parallel language school boards would apply to the entire province, with the exception of the Montreal and Quebec City areas which had been divided into Protestant and Catholic school boards under the Constitution Act, 1867. To all intents and purposes, Bill 3 complied with section 23 since it awarded the English minority full management and control rights. However, it came up short as far as the constitutional provision respecting denominational rights was concerned. The Quebec Superior Court advised the government "to refrain from taking any steps or

action with a view to implementing Bill 3". The PQ government had intended to appeal this ruling, but the present government decided otherwise. The Minister of Education, Claude Ryan, has preferred to introduce a new bill which goes more or less in the same direction as the now defunct Bill 3. Bill 107, tabled in December 1987, in principle would create linguistic rather than denominational school boards, but it would postpone their establishment until after it has been subjected to a judicial review. In case of an unfavourable ruling regarding the bill, Mr. Ryan and Premier Bourassa have indicated that they would request that an amendment be made to section 93 of the Constitution Act, 1867.

Since it is expected that the process of establishing language school boards could take a very long time, a second bill, tabled at the same time as Bill 107, provides that the government could order the setting up of minority-language school boards within present denominational school boards. Thus, Francophone trustees would sit on Anglophone Protestant school boards and Anglophone trustees would sit on Francophone Catholic School boards. This palliative measure could defuse a situation that has become particularly explosive in the Montreal region, where the Francophone clientele of the Greater Montreal Protestant School Board has risen from 3 to 33% since Bill 101 was passed, without a Francophone representative sitting on the school board.

Since the passage of Bill 101, the school boards had continued to accept a certain number of students who, according to chapter VIII of the law, should have been denied instruction in English; these were children of immigrants or children of English-speaking parents from other English provinces. These students were considered "illegal" and the school boards thus could not claim provincial grants for them. However, the passage of Bill 58 in June 1986 stabilized the situation somewhat. Henceforth, school boards must comply with the Canada clause as well as with the unaffected provisions of Bill 101, or else face heavy penalties. The Minister of Education has obtained the power from the National Assembly to admit to English schools some children who normally would not be eligible. While some parents have obtained the admission of their children in this way, others use the avenue provided by the courts to challenge the

rules for the application of Bill 101. Thus a ruling of the Superior Court rendered at the beginning of January 1988 has had the effect of invalidating a regulation specifying certain terms of Bill 101 because it set criteria more severe than those prescribed in the bill.

The English Catholic minority in the Montreal region is also dissatisfied with its lot within the present structure. At Brossard, at the beginning of 1988, a group of parents and teachers asked the Superior Court to force the Minister of Justice and the Attorney General of Quebec to give an English Catholic school run by Anglophone educators and administrators to those children who have a right to it.

2. Ontario

After the Constitution Act, 1982 received Royal Assent, two provincial associations, namely the Association canadienne-française de l'Ontario and the Association des enseignants franco-ontariens pooled their human and financial resources and filed charges against the Attorney General of Ontario in an effort to have certain education laws declared unconstitutional. The Ontario government short-circuited this move by asking the Ontario Court of Appeal to rule on the validity of certain existing legislative provisions and on its school management bill. In an historic decision handed down in June 1984, the Court of Appeal ruled in favour of the French-language minority on all counts.

The provincial legislature wasted no time in acting with respect to at least one of the contentious points. In December 1984, it adopted Bill 119, which gives every French-speaking person qualified under it to be a resident pupil of a school board the right to receive elementary and secondary school instruction in a French-language instructional unit operated or provided by the board. The required number of students was reduced to one and school boards without French-language instructional units were required to purchase such units from a neighbouring school board. This legislation corrected the shortcomings as far as numbers, territory and discretionary powers of school boards were concerned. The issue of management remained to be dealt with.

After several attempts, the Ontario legislature adopted Bill 75 in the summer of 1986. For the first time ever in Ontario, French-speaking parents were granted some management and control rights. Without going so far as to establish parallel school boards, the legislation created language sections in all school boards with French-language instructional units. Furthermore, concurrent with the tabling of the bill, the Minister of Education announced that the government supported the creation of a French-language school board in the Ottawa-Carleton region, where Francophones have been demanding a parallel school board for the past decade. The Roy Committee, appointed by the Minister of Education to study the issue, tabled its report on 27 January 1987. The report states that cultural and language imperatives both irrefutably demand the grouping of French-speaking pupils under a single board. It contains 70 recommendations on establishing a homogeneous French-language school board.

The provincial government recently set up two committees: the first is assigned the mandate of developing a French-language education system in Ottawa-Carleton, in accordance with the terms and conditions of the Roy Report, while the second is to examine the impact on the region's four school boards of grouping together French-language students. **However, the appointment of a new Minister of Education has resulted in the delay of this process, and some fear that the necessary structures will not be in place before the next school elections, which are to be held in the fall of 1988.**

In Ontario, the concept of language school boards is clashing with the constitutional requirements of section 93. In a recent legal opinion, constitutional expert Gérald Beaudoin hinted that it might be possible to establish a school board with two components, one denominational and the other public. On this subject, he noted the following:

> Section 93 was drafted in the period from 1864 to 1867. Canada has evolved considerably since that time. It is important for provincial educational systems to undergo some reforms from time to time to meet changing needs. On numerous occasions, the Privy Council and the Supreme Court have stated that the educational system is ever destined to evolve. The

> fact of the matter is that denominational rights have been entrenched in the Constitution since 1867. Likewise, language rights have been recognized by the Constitution since April 17, 1982. In light of this two-pronged constitutional safeguard, a great deal of legislative dexterity is required in order to initiate education legislation reforms.(1)

In general, then, Ontario's education legislation is evolving toward a more obvious respect for the Constitution's language-of-education provisions. However, there are a number of cases pending on the issues of equality of access to resources and the definition of a French school; once they have been settled, it will be clearer what regulations will have to be laid down.

C. Other Provincial Court Cases

Following is a brief overview of the cases currently before provincial courts:

1. Prince Edward Island: Comité des parents pour une classe française à Summerside v. Regional Administrative Unit No. 2

   In January 1986, the government of PEI submitted a reference to the Court of Queen's Bench, in order to obtain a declaratory judgment on a suit brought by a group of parents in Summerside who were demanding the right to an education in French for their children. The issues in this case are the school board's discretionary powers and the number of pupils required. Arguments were heard in February 1987, but the decision has not yet been handed down.

2. New Brunswick: Parents for Fairness in Education v. Société des Acadiens du Nouveau-Brunswick (SANB)

   This case came before the New Brunswick Court of Appeal when the Supreme Court of Canada ruled in May 1986 that the Court of Appeal had the jurisdiction to hear the appeal and that the right to use French or English before the courts in New Brunswick did not include the right to be understood (contested by the SANB). The group Parents for Fairness in Education contested a 1983 ruling in favour of the

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(1) Excerpt from Télé-CLEF, No. 4, 1986, p. 25. (translation)

SANB, to the effect that an English-language school board may not enroll Francophone pupils in a [French] immersion program integrated into its English-language schools. In July 1987 the Court of Appeal upheld Mr. Justice Richard's decision in favour of the SANB.

3. Nova Scotia: Comité pour l'éducation française au Cap Breton v. Attorney General of Nova Scotia

Francophone parents applied to the Nova Scotia Supreme Court to have the Public Instruction Act declared invalid and unconstitutional because it gives the Minister of Education the power to decide what schools may have the status of "Acadian schools", and what courses may be given in French in such schools (December 1986).

The case was scheduled to be heard in Halifax in January 1988. Becauseof the length of the delay, the Francophone parents asked the Nova Scotia Supreme Court to order the opening of a temporary French school in September 1987, so as not to penalize the children. In July 1987, Mr. Justice MacDonald ruled that the children would not be irreparably harmed by the delay and that it would therefore be better to wait for the case to follow its normal course.

On 16 January 1988, the Court issued its ruling, described as an "incredible victory" by the counsel for the Francophone parents. It orders the Cape Breton School Board to find a suitable place for a French school and to proceed with the enrollment of pupils towards the end of March. The Court will then decide whether the number of potential pupils justifies the opening of a school.

4. Alberta:

a. Association Georges-et-Julia-Bugnet v. Attorney General of Alberta

In a decision handed down in July 1985, the Court of Queen's Bench recognized the right of Francophone parents to French education for their children, but it rejected their request for classes taught in French separate from immersion classes and for the right to manage such classes. The decision was appealed in 1985 and the

appeal was heard on 23, 24 and 25 September 1986; the ruling was handed down on 31 August 1987.

The Court of Appeal found that a minority's constitutional right to educational institutions includes the organization, management and control of its own schools. But it overturned the original decision in finding that the Francophone community in Edmonton had not proved that its numbers warranted the exercise of that right. The Court of Appeal thus placed on the shoulders of the minority the burden of proving that its numbers warrant the right of school governance. **The Association canadienne-française de l'Alberta and the parents involved asked the Supreme Court to hear their case. On 7 December 1987, the Supreme Court decided to comply with their request, which is of national importance because the ruling rendered will serve as a precedent in all cases before the courts now and in the future in all other provinces. The Supreme Court of Canada will have to rule on the following three points:**

- **the right of the minority to run its own schools;**
- **the definition of "sufficient number";**
- **the obligation of the Government of Alberta to legislate so as to comply with the requirements of the Canadian law by taking concrete measures to recognize the rights of the Francophone minority.**

b. Molgat v. Attorney General of Alberta

Recently, another Alberta parent decided to take the province and three school boards to court for not providing his children with the French-language education to which they are entitled under section 23 of the Charter. At present, the school boards in question provide French-language education in immersion classes to Francophones and Anglophones in the Red Deer area. This case could clarify certain constitutional provisions by establishing whether immersion programs are adequate recognition of the education rights of minorities.

5. Saskatchewan: Commission des écoles fransaskoises inc. v. Attorney General of Saskatchewan

The provincial government having turned down their request for the establishment of a homogeneous [French-language] school board for the entire province, Francophone parents took their case to court. The government rejected the idea of taking the case to the Court of Appeal. Consequently, a trial was held from 19 to 28 May pitting the Commission des écoles françaises and 11 joint plaintiffs against the provincial government and the Department of Education. The likelihood is great that the case will go all the way to the Supreme Court of Canada.

6. Manitoba: Fédération provincial des comités de parents v. Attorney General of Manitoba

An application was filed on 26 September 1986 by the Fédération provinciale des comités de parents to have declared invalid the [provisions of Manitoba's] Public Schools Act preventing Francophone parents from managing French-language schools. In March 1987 the government decided to submit the matter to the Court of Appeal through an application for a declaratory ruling. **It was only in January 1988, however, that the provincial cabinet agreed on the wording of the questions to be asked in its referral. It can be expected, therefore, that the ruling will be rendered later in 1988.**

7. Quebec: Patrick Frances Griffin v. Commission scolaire régionale Deux-Montagnes et Commission scolaire Laurenval

The petitioner is seeking a declaratory judgment affirming the right of English-speaking Roman Catholics to administer, direct and control their own schools. The case was listed for trial by the Superior Court in March 1986 and began being heard on 18 September 1987.

8. Ontario: Jacques Marchand v. Simcoe County Board of Education

In response to the Ontario Court of Appeal's favourable decision of 1984, parents in the Penetanguishene area initiated legal proceedings against the Simcoe County Board of Education and the Attorney General of Ontario, alleging that the right to receive instruction in French in minority-run educational institutions assumed that these institutions would be equivalent and of equal quality to those provided by the Board to the Anglophone majority. In July 1986, Mr. Justice Jean-Charles Sirois ruled in favour of the Francophone parents, and the defendants did not see fit to appeal. The Simcoe County Board of Education's French-Language Education Council (FLEC), a new management body established under Bill 75, then formulated plans for a suitable educational institution for Francophones, estimated to cost $4.5 million. In the spring, the Ministry of Education informed the Board that it would provide 95% of $2.4 million, an amount it judged sufficient for the needs of the Francophone students. Dissatisfied with this response, the Simcoe County Board and its FLEC asked the courts to decide which of the two proposals met the students' needs more closely.

In a decision handed down on 13 October 1987, Mr. Justice Sirois ruled that only the FLEC was entitled to decide what measures were necessary to meet the needs of its French-speaking clientele and that the Ministry of Education had an obligation to provide the $4.5 million requested by the FLEC. It is expected that the provincial Attorney General will appeal this judgment, since it sets a precedent that could have significant financial implications.

9. British-Columbia:

Anglophone parents on Vancouver Island argued in the B.C. Supreme Court that section 23 of the Charter guaranteed them the right to French immersion schools for their children. In September 1987 Mr. Justice Proudfoot ruled that the Charter's goal was to protect the language rights of the minority, and not those of the majority.

In several provinces, other suits are before the courts or being prepared on the issue of access to immersion classes and on transportation for pupils enrolled in them. Furthermore, a suit is being prepared in British Columbia on access to education in French for the children of Francophone parents and on the right of such parents to administer their own school board.

PARLIAMENTARY ACTION

In October 1985, the Commissioner of Official Languages organized a national colloquium entitled "The Minorities: Time for Solutions". Several members of the Standing Joint Committee on Official Languages attended the colloquium. The lack of respect for Francophone rights in education was a major topic of discussion.

From January to June 1986, the Standing Joint Committee Committee on Official Languages examined this issue. It heard many witnesses, both representatives of organizations and experts in constitutional law. The Parliamentarians concluded that there are still many obstacles to minority language education. On 9 June 1987, the Committee tabled its Third Report to Parliament. It recommended that a federal-provincial First Ministers' conference be held in early 1988 to discuss education in the country's official languages.

The government replied to the Committee through the Secretary of State on 17 November 1987. For the time being, the latter seems to think that a federal-provincial conference is not necessary because a special forum for such consultations already exists, namely the Council of Ministers of Education (Canada) (CMEC). He plans to raise the question of the obstacles to instruction in the minority language with the Ministers of Education, during the meetings of the CMEC and during the negotiations for the renewal of agreement protocols regarding minority language education and second language teaching. In December 1987, the Committee decided to ask the Secretary of State to come and discuss with it the urgency of the matter.

At the end of November 1986, the Commission nationale des parents francophones held in Montreal a first gathering entitled "Opération 23"; every provincial parents' association sent ten delegates. The Parliamentary Secretary to the Secretary of State and the Commissioner of Official Languages both delivered significant addresses to the gathering. Its main value, however, was that it made the parents' representatives more fully aware of the language rights conferred by section 23, the merits of the suits being brought, the definition of a French school and the various school-governance models for official-language minorities.

During its second conference on the subject, held in November 1987, the Commission took notice of a study entitled Profil des systèmes éducatifs pour minoritaires, prepared by the Centre de recherche sur les minorités francophones of Saint-Boniface College in Winnipeg. The 130 delegates at this conference reiterated their request for a first premiers' conference on constitutional rights in the field of education.

CHRONOLOGY

Federal Level

1867 - The Fathers of Confederation protected the right to denominational schools in section 93 of the Constitution Act, 1867, but no mention was made of language rights in education.

1968 - In Book II of its Report, the Royal Commission on Bilingualism and Biculturalism recommended that parents be given the right to choose the official language in which their children would be educated. The Commission also emphasized the need for schools where teaching was done in the minority language, especially in regions designated "bilingual districts".

1969 - In the federal government White Paper entitled The Constitution and the People of Canada, it was recommended that any future Charter of Rights include a provision giving all persons the right to have either French or English as the language of instruction.

1970 - A federal-provincial agreement was concluded on the creation of a program of bilingualism in education. The [federal] government agreed to fund part of minority-language and second-language education, using a formula based on number of enrolments and time devoted to such programs in each province.

1972 - The Report of the Special Joint Committee on the Constitution discussed guaranteeing the right to minority-language education.

1978 - Prime Minister Trudeau tabled Bill C-60, which provided, among other measures, for the adoption of a Charter enshrining language rights in education.

1979 - The Task Force on Canadian Unity tabled its report, adding to existing language education rights the maintenance of those rights for children who change their province of residence.

1980 - The Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada was tabled in the House of Commons, containing the first version of section 23. In the subsequent discussions, the section was re-worked into its final form.

1982 - The Constitution Act, 1982 was proclaimed.

1985 - In November, the Secretary of State tabled before the Standing Joint Committee on Official Languages the Pierre Foucher report on implementation of section 23 in the various provincial legislations, Constitutional Language Rights of Official-Language Minorities in Canada.

1986 - The Standing Joint Committee on Official Languages studied the issue of minority-language education (January-June).

1987 - On 9 June, the Standing Joint Committee on Official Languages tabled its Third Report to Parliament. The report examined the issue of the education rights of official language minorities.

- On 25 June, the government tabled Bill C-72, An Act respecting official languages, in which it undertakes to uphold the constitutional guarantees regarding minority language education rights.

Provincial Level

1890 - The Regulations of Ontario's Ministry of Education made English the language of instruction and limited the use of French to small classes in so-called "bilingual" schools where the pupils did not understand English.

1892 - The legislature of the Northwest Territories adopted English as the sole language of instruction.

1897 - In Manitoba, under the Laurier-Greenway compromise, where ten or more pupils spoke a language other than English, that language and English were to be considered languages of instruction in so-called "bilingual" schools.

1902 - The regulations adopted by Nova Scotia's Council of Public Instruction authorized the use of French in grades one to four, thereby amending the Public Instruction Act of 1864 which had made English the sole language of instruction.

1905 - Saskatchewan and Alberta declared English the sole language of instruction but left a place for French in small classes as set down in the 1892 NWT ordinance.

1912 - Ontario enacted Regulation XVII, declaring English the sole language of instruction after grade three, and restricting the study of French to one hour a day.

1916 - New Manitoban compromises annulled the Laurier-Greenway compromise and made English the sole language of instruction in Manitoba's public schools.

1931 - Saskatchewan's legislature declared English the sole language of instruction in that province's public schools.

1967 - An amendment to the Public Schools Act in Manitoba made it possible to provide instruction in French for a maximum of half the class-room day.

1967 - An amendment to the education act in Saskatchewan made it possible to provide instruction in French for one hour each day.

1968 - Ontario passed legislation authorizing the establishment of elementary and secondary public schools providing instruction in French.

- The Premier of New Brunswick tabled a declaration in the legislature on equality of language opportunity, specifically affirming the right of children to receive their schooling in either English or French.

- An amendment to Alberta's School Act allowed so-called "bilingual" schools to provide instruction in French in grades one and two.

1969 - Quebec's legislature passed Bill 63, Loi pour promouvoir la langue française au Québec, whose affirmations included the right of parents to choose the language in which their children would be educated, but which also required that children educated in English should acquire a working knowledge of French.

1974 - Quebec's legislature passed Bill 22, the Loi sur la langue officielle, which provided for a test to determine whether or not pupils had an adequate knowledge of the language in which they wanted to be educated.

1977 - Quebec's legislature passed Bill 101, the Charte de la langue française, limiting access to English education.

- At the St. Andrew's conference, nine provincial premiers made a commitment in a statement of principle to do everything in their power to offer education in both French and English where numbers warrant.

1978 - Meeting in Montreal this time, the ten provincial premiers stated their approval in principle of the right of every child belonging to an official-language minority to attend elementary and secondary school in that language, wherever numbers warrant. They recognized, however, that each province must remain free to define the ways it will apply this principle. Freedom to choose language of education was therefore no longer an option.

1984 - In June, the Ontario Court of Appeal ruled on the scope of section 23 of the Charter with respect to the Education Act: it found certain provisions in the Act incompatible with the Charter.

- In December, through Bill 119, Ontario recognized the right of all Francophones to be educated in French in Ontario. A ruling by the Supreme Court of Canada invalidated the "Quebec clause" (articles 72 and 73 of Bill 101).

- A judgment of the Supreme Court of Canada rendered invalid the "Quebec clause" (sections 72 and 73 of Bill 101).

1986 - In June, Quebec passed Bill 58, regularizing the situation of pupils illegally enrolled in Quebec's English schools.

- In July, the legislature of Ontario passed Bill 75, giving Francophones certain rights of governance over French schools.

1987 - In July, the New Brunswick Court of Appeal maintained Mr. Justice Richard's ruling that an English-language school board may not enrol Francophone pupils in French immersion classes integrated into its English schools.

- In August, the Nova Scotia Supreme Court declined to issue an injunction that would have created temporary French classes on Cape Breton Island until such time as the case could be heard in January 1988.

- In August, the Alberta Court of Appeal declared that Francophones had a constitutional right to manage their own schools but found that it had not been demonstrated that numbers in Edmonton warranted such schools there.

- In September, further to the decision by Mr. Justice Sirois in the Marchand case (July 1986), the Simcoe County Board of Education's FLEC applied for an injunction forcing the Ontario Ministry of Education to provide the funding needed to give the minority access to instruction in their own language equivalent to that available to the Anglophone majority. The judge ruled in the Board's favour.

1988 - **In January, the Supreme Court of Nova Scotia ordered the Cape Breton School Board to comply with the request of Francophones for a French-language school.**

SELECTED BIBLIOGRAPHY

Beaudoin, Gérald-A. "Les droits des minorités: mythe ou réalité? La protection constitutionnelle des minorités". Les Cahiers de droit, Vol. 27, No. 1, March 1986, p. 31-52.

Canada, Royal Commission on Bilingualism and Biculturalism. Report, Book II: Education. Queen's Printer, Ottawa, 1968.

Comité pour l'éducation française au Cap-Breton v. Attorney General of Nova Scotia (January 1988), (Supreme Court of Nova Scotia) (not published).

Foucher, Pierre. "Les droits linguistiques en matière scolaire". In Michel Bastarache et al., ed., Les droits linguistiques au Canada, Les Éditions Yvon Blais Inc., Montreal, 1986, p. 269-325.

Foucher, Pierre. Constitutional Language Rights of Official Language Minorities in Canada. Canadian Law Information Council, Ottawa, 1985.

Hébert, Monique. Minority Language Education Rights. Current Issue Review 84-34E, Research Branch, Library of Parliament, Ottawa.

Magnet, Joseph. "Minority Language Education Rights". Supreme Court Law Review, Vol. 4, 1982, p. 195-216.

Pollard, Bruce G. "Minority Language Rights in Four Provinces". In Peter Leslie, ed., Canada: The State of the Federation, 1985, Institute of Intergovernmental Relations, Kingston, 1985, p. 193-222.

Proulx, Daniel. "La précarité des droits linguistiques scolaires, ou les singulières difficultés de la mise en oeuvre de l'article 23 de la Charte canadienne des droits et libertés". Revue générale de droit, Vol. 14, No. 2, 1983, p. 335-370.

JURISPRUDENCE

Trustees of the Roman Catholic Separate Schools for Ottawa v. Mackell, [1917] A.C. 62 (Privy Council Judicial Committee)

Greater Montreal Protestant School Board v. Quebec Minister of Education, [1976] C.S. 480 (Quebec Superior Court)

Quebec Association of Protestant School Boards v. Attorney General of Quebec, [1982] C.S. 673 (Quebec Superior Court); confirmed [1983] C.A. 77 (Quebec Court of Appeal); confirmed [1984] 2 S.C.R. 66 (Supreme Court of Canada)

Société des Acadiens du Nouveau-Brunswick v. Minority School Board No. 50, [1983] 48 N.B.R. (2d) 361 (New Brunswick Court of Queen's Bench)

Reference re: Education Act of Ontario and Minority Language Education Rights, [1984] 47 O.R. (2d) 3 (Ontario Court of Appeal)

Quebec Association of Protestant School Boards v. Attorney General of Quebec, [1985] C.S. 872 (Quebec Superior Court)

Jean-Claude Mahe v. Alberta, [1985] 39 Alta. L.R. (2d) 215 (Alberta Court of Queen's Bench)

Jacques Marchand v. Simcoe Board of Education, [July 1986], (Ontario Supreme Court) [not published].